IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3040 OF 2002

WITH

WRIT PETITION NO. 2084 OF 2005

Vilas Purushottam Kalkar .. Petitioner.

vs.

State Bank of India. .. Respondents.

WITH

WRIT PETITION NO. 2084 OF 2005

State Bank of India. .. Petitioner.

vs.

Shri V.P. Kalkar. .. Respondent.

Mr. V.P. Vaidya for petitioner in W.P. 3040/02
and for respondent in W.P. No. 2084/03.
Mr. A.G. Damle for petitioner in WP No. 2084/03
and for respondent in W.P. No. 3040/02.

CORAM : S.U. KAMDAR, J.

DATE : 17th April, 2006.

P.C.:

. The present petitions are filed challenging

the impugned order dated 9.5.2002 passed by the Industrial Tribunal, Bombay. Some of the material facts of the present case, briefly enumerated, are as under :-

2. The petitioner workman was working in the services of the respondent company with effect from 1.9.1980 and was appointed as a clerk in the Bank. During the period January, 1985 to December, 1985 the petitioner was posted at Ojhar Branch of the respondent no. 1 Bank as a clerk and was assigned the duty in the Foreign Exchange Department. One of his duty was to prepare the credit-debit vouchers on the basis of the instructions of the superiors and after verification of the documents. On 13.12.1985 the petitioner was issued a show cause notice inter alia levelling three charges. One of the charge was that the petitioner prepared six debit vouchers totalling to about Rs. 22,000/- putting through Cash Credit Account of M/s. Hindustan Aeronautics Limited and credited the same amount by way of Demand Draft favouring State Bank of India, Vakola Branch, Mumbai. It is also stated in the charge sheet that the petitioner has prepared Credit-Debit vouchers with fraudulent intention to commit act of misappropriation in respect of the amount by applying different foreign exchange rate while debiting the amount of M/s. Hindustan Aeronautics Limited and crediting said amount and the difference

of the amount was transferred to the account of third party. On 12.6.1986 a charge sheet was issued and the petitioner was accordingly charge sheeted. After the charge sheet, the petitioner filed reply and after conducting enquiry on 10.9.1987 a dismissal order was passed by the respondent Bank. The Union representing the petitioner-workman raised an industrial dispute challenging the order of dismissal from service and the matter was referred for adjudication. On 3.8.1989, the petitioner filed statement of claim attacking the disciplinary proceedings and contended that it is against the principles of natural justice. On 22.6.1994, Part I Award was passed holding that the enquiry is bad in law and the Bank was directed to lead fresh evidence to prove the charges against the petitioner before the Industrial Court. Both the parties i.e. petitioner and the respondent bank led oral evidence and filed various documents and ultimately on 9.5.2002 Part II Award was passed by the learned Presiding Officer holding that the charge no. 1 and charge no. 3 are not proved. However, in so far as charge no. 2 is concerned, he has held that the said charge is partly proved. By the said order dated 9.5.2002 the Labour Court has held that the punishment of dismissal is not an appropriate punishment and has reduced the said punishment from dismissal to compulsory retirement. It is this Award dated 9.5.2002 which is challenged by the

petitioner by filing the present petition.

3. The learned counsel appearing for the petitioner-workman has contended that the Labour Court having held that the charge nos. 1 and 3 are not proved, and in so far as charge no. 2 is concerned, the Labour Court having framed a totally fresh charge and held the petitioner guilty the punishment awarded by the Labour Court of compulsory retirement needs to be set aside.

4. The charge no. 2 as framed by the respondent Bank was that on 9.12.1985, M/s. Hindustan Aeronautics Limited vide their letter dated 5.12.1985 had authorised the Bank to debit their cash credit account with equivalent amount in Rupees of 6889.74 in retirement of an import document. On the same day i.e. 9.12.1985, Hindustan Aeronautics Limited had also authorised the bank vide their letter dated 6.12.1985 to debit their cash credit account with an equivalent amount in rupees of UK Pound 837.15. It was the case of the Bank that while doing so the petitioner had applied different rate of exchange for the debit purpose and credit purpose. For the purpose of Hindustan Aeronautics Limited a special rate of exchange was fixed which was 5.2565 and the same was applied while debiting its account whereas the

actual rate prevailing as on that date was 5.5545 and this prevailing rate was applied while crediting the said account of Hindustan Aeronautics Limited in respect of the same transaction and thus there was an excess amount credited aggregating to Rs. 7,888.00 in the account of State Bank of India. This difference was thereafter transferred in the account of third party. That is the charge which was levelled by the respondent bank against the petitioner. However, the Industrial Court while considering the said charge no. 2 has punished the petitioner of not the said charge but of dereliction of duty in writing inconsistent vouchers and papers and applying different rate of foreign exchange. It has been thus submitted by the learned counsel for the petitioner that once the charge as framed could not be proved, it was not open for the Labour Court to apply a different charge and impose a penalty on the petitioner workman herein. Thus, the learned counsel for the petitioner has submitted that the impugned order is totally erroneous and requires to be quashed and set aside.

5. The learned counsel for the petitioner workman has thereafter submitted that after applying the aforesaid charge and holding the petitioner guilty while awarding the punishment the Court felt that the said punishment of dismissal is improper and required interference under Section 11-A of the

Industrial Disputes Act. The said punishment of dismissal has been substituted by compulsory retirement of the petitioner with effect from 10.9.1987. The learned counsel for the petitioner has submitted that while compulsorily retiring the petitioner, the Labour Court felt that the punishment of dismissal is not proper and, therefore, there should have been an effective relief to the petitioner. However, in view of the fact that the petitioner had only put in seven years service the petitioner is not entitled to the pension and thus in effect the petitioner has been given no benefit of interference by the Labour Court and, therefore, this Court should grant some relief to the petitioner herein once the dismissal order has been set aside by the Labour Court.

6. The learned Counsel for the respondent Bank has on the other hand contended that the charge which has been ultimately proved in respect of charge no. 2 as against the petitioner workman the Labour Court has not framed a different charge but the Labour Court has felt that the misappropriation has not been proved but what is in fact proved is a dereliction of duty. It has been submitted that once there is a charge levelled against the petitioner then it is open to the Court to come to the conclusion that on the proved facts a charge of lesser degree has been established and not of

misappropriation of fund and accordingly it was open to the Labour Court to punish the petitioner employee for a lesser charge. However, it has been further submitted that since the petitioner workman has only put in seven years of service, the petitioner workman being not qualified for pensionery benefits cannot be granted pension. It is submitted that under the Pension Rules framed by the Bank for the employees the minimum qualifying service required is of 20 years and the petitioner having put in only seven years is not entitled for pensionery benefits. He has further submitted that the petitioner will be given all the benefits on the basis of the rules for compulsory retirement excluding the pension.

7. The learned counsel for the respondent Bank has also contended that they have also filed their own writ petition being Writ Petition No. 2084 of 2005 challenging the finding of the Labour Court in respect of charge nos. 1 and 3 where the Labour Court has held that the said charges are not proved. It has been submitted that in fact the petitioner workman is guilty of all the three charges and the Labour Court has erred in discharging the petitioner in respect of charge nos. 1 and 3.

8. Before I deal with the petition of the workman, I would like to deal with the petition

preferred by the Bank. In so far as the petition of the bank is concerned, the contention that the charges nos. 1 and 3 are proved cannot be accepted in light of the discussion and findings given by the Labour Court. The said findings are based on material and evidence on record before the Labour Court. It is not open for me under Article 226 of the Constitution of India to reappreciate the evidence and the material which was led as and by way of evidence before the Labour Court and arrive at different conclusion. From the perusal of the order I do not find any perversity or any error in coming to the conclusion that charge nos. 1 and 3 are not proved before the Labour Court and, therefore, the Labour Court has rightly held that the said charges are not proved. The learned counsel for the petitioner Bank in support of his contention has urged before me for reconsideration of the said evidence. I am afraid that that is not the jurisdiction under Article 226 of the Constitution of India and, therefore, I find no merit in so far as the contention of the petitioner is concerned. The same is accordingly rejected.

9. Now turning to the petition which has been preferred by the workmen in so far as the first contention that the Labour Court has framed a different charge then the charge which was levelled against him by the Bank I am of the view that the

said contention is misconceived. In my opinion, the charge which was levelled by the respondent Bank being the charge that by virtue of the aforesaid applying different rates of debit and credit in respect of the transaction of M/s. Hindustan Aeronautics Limited the petitioner has in fact sought to misappropriate the said amount of Rs. 7,888/- by transferring the same to the account of Ramchandran Nair who was holding a non-convertible rate account though may not have been established to the hilt but it is open to the Labour Court on the basis of the facts proved to come to a finding that though the extreme charge of misappropriation is not established still there is in fact a negligence on the part of the workman in discharging his duties and on the said basis give appropriate punishment. On the material before the Labour Court it is established that in fact petitioner has applied two different rates of exchange in respect of same transaction while giving entries on debit and credit side and has accordingly earmarked separate amount of Rs. 7888/- and while doing so he has not taken enough precaution and care to ascertain the actual prevailing rate which was required to be accepted in case of M/s. Hindustan Aeronautics Limited. In my opinion the finding given by the Labour Court that there was a dereliction of duty cannot be disturbed. The Labour Court has come to the finding that even the vouchers are signed by the petitioner workman

and those vouchers and papers when it is signed no precaution of verification of record has been taken and therefore contention that it is done at the instance of the superior cannot be accepted. It was his duty to verify and ascertain the correctness thereof before applying the exchange rate and approving the vouchers by signing the same. The Labour Court has come to the finding that by applying different rate the amount of Rs. 7888/- from the cash credit account of M/s. Hindustan Aeronautics Limited has been debited but it was not similarly credited the account of the bank with the same rate of exchange and, therefore, there is a serious dereliction of duty by the petitioner workman though it could not be established that in fact that excess amount has been withdrawn by the petitioner workman himself with a view to misappropriate the said amount. In my opinion it does not mean that the petitioner workman cannot be held guilty on the ground of dereliction of duty. The finding of the Labour Court that the petitioner is guilty of dereliction of duty therefore cannot be interfered with nor I can accept the contention of the petitioner workman that there is different charge for which he is punished than the charge framed in the charge sheet issued by the respondent bank. In that light of the matter I do not find any reason to interfere with the finding in so far as charge no. 2 is concerned which has been levelled

by the Labour Court.

10. Now turning to the second contention of the petitioner-workman that he is entitled to some benefits by virtue of the fact that the Labour Court itself has interfered under Section 11 A of the Industrial Disputes Act against the punishment of dismissal by substituting it with compulsory retirement. In so far as this contention is concerned, I am of the opinion that the petitioner workman has been given a benefit of compulsory retirement though it may be that by virtue of non putting in sufficient length of service for the purpose of eligibility for pensionery benefits he may not get the benefits consequent upon the reduction of the punishment. But that is no ground for me to further interfere under section 11 A of the Industrial Disputes Act, 1947 for substituting the punishment of compulsory retirement to the lesser punishment or to grant reinstatement or compensation or back wages in lieu of reinstatement. But it is now settled law as held by the Apex Court that punishment ought not to be interfered with under Section 11 A unless it is found to be shockingly disproportionate with the charges levelled against the petitioner. The Labour Court having interfered with the punishment, I am not in a position to further interfere with the same so as to give actual benefit to the petitioner workman of any

lesser punishment. The non-completing of a sufficient length of service for the purpose of pensionery eligibility do not entitle the petitioner workman to now contend that I must grant any other punishment than compulsory retirement. In my opinion, the order of the Labour Court is not required to be interfered with. Accordingly both the petitions are dismissed. However, there shall be no order as to costs.